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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,321	07/14/2006	Frans Johan Sarneel	19790-012US1	1840
26191	7590	10/27/2008	EXAMINER	
FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			ANDERSON, JERRY W	
ART UNIT	PAPER NUMBER			
	4152			
NOTIFICATION DATE	DELIVERY MODE			
10/27/2008	ELECTRONIC			

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary	Application No.	Applicant(s)	
	10/586,321	SARNEEL ET AL.	
	Examiner	Art Unit	
	JERRY W. ANDERSON	4152	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
 - 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-22 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 14 July 2006 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/29/2007</u> . | 6) <input type="checkbox"/> Other: ____ . |

DETAILED ACTION***Drawings***

1. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because photographs are not acceptable, see 37 CFR 1.81-85: Photographs, including photocopies of photographs, are not ordinarily permitted in utility and design patent applications. The Office will accept photographs in utility and design patent applications, however, if photographs are the only practicable medium for illustrating the claimed invention. For example, photographs or photomicrographs of: electrophoresis gels, blots (e.g., immunological, western, Southern, and northern), auto-radiographs, cell cultures (stained and unstained), histological tissue cross sections (stained and unstained), animals, plants, in vivo imaging, thin layer chromatography plates, crystalline structures, and, in a design patent application, ornamental effects, are acceptable.

2. Applicant is advised to employ the services of a competent patent draftsperson outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Specification

3. The use of the trademarks SIMIX and C Batter Crisp has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

.Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. **Claims 1-2, 4-5,7-9, 11-22** rejected under 35 U.S.C. 103(a) as being unpatentable over *Lenchin*, J.M., U.S. Pat.# 4,529,607, in view of *Evans*, et al., U.S. Pat.# 4,208,442 and further in view of *Fruin*, J.C., U.S. Pat.# 3,767,826.

7. **Regarding Claim 1, 21 and 22** *Lenchin* discloses a batter mix, but lacks the use of starch alkenyl succinate (0.5-10 %) and bleached and/or oxidized starch treated with hypochlorite. (20-98%). Examiner notes that *Lenchin* teaches the use of starch modified with 1-octenylsuccinic anhydride. The end

result of this modification is starch n-octenyl succinate. (*Richards et al US. Pat. # 4,035,235* lines 66-69 column 1, lines 1-10, 47-52, 60-69 column 2) *Evans* teaches the use of starch alkenyl succinate at 0-13 % of the dry mix. (lines 50 column1, lines 31-31 column 5, lines 15-18 column 6) *Fruin* teaches the use of bleached or oxidized starch, treated with hypochlorite, in a batter mix at roughly 50 % of dry mix. (lines 31-32 column 1, lines 39-40 column 1, lines 47-50 column 2, lines 3-5 column .

8. *Lenchin, Evans, and Fruin* are all analogous art, being concerned with making a batter to coat and fry foods.

9. It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of *Evans* and *Fruin* to modify the *Lenchin* batter to provide a coating having a crisp texture and taste, a uniform coloration and appearance and good adhesion to the comestible surface, (lines 35-37 column 1 *Evans*), and to increase the adhereability . . . of the batter. (lines 36-38 column 1 *Fruin*)

10. Although the ranges in the instant claim and the prior art are not identical the values are substantially close to that of the instant claims so that one of ordinary skill in the art would have expected compositions in such close proportions to those in the prior art to be *prima facie* obvious and to have the same properties. (Titanium Metals Corp., 227 USPQ 773 (CA FC 1985)

11. **Regarding Claim 2,** *Lenchin, Evans* and *Fruin* teach the claimed invention as discussed above, including the starch alkenyl succinate is starch

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octenyl succinate. (lines 31-32, column 3, lines 31-31 column 5, lines 15-18 column 6, *Evans*)

12. **Regarding Claims 4 and 12** *Lenchin, Evans* and *Fruin* teach the claimed invention as discussed above, including the modified starch is derived from potato, corn, tapioca, or rice. (lines 55-56 column 3 *Lenchin*)

13. **Regarding Claim 5,** *Lenchin, Evans* and *Fruin* teach the claimed invention as discussed above, including the starch alkenyl succinate is derived from a waxy starch. (lines 68-69 column 4, *Lenchin*)

14. **Regarding Claim 7 ,** *Lenchin, Evans* and *Fruin* teach the claimed invention as discussed above, including the modified starch is corn starch. (lines 1-4, 70 column 2, Table 1 column 3, *Fruin*)

15. **Regarding Claim 8,** *Lenchin, Evans* and *Fruin* teach the claimed invention as discussed above including the use of flour and starches. (lines 48-50 *Fruin*, lines 54-56 column 3 *Lenchin*, Lines 40-41 column 2 *Evans*)

16. **Regarding Claim 9,** *Lenchin, Evans* and *Fruin* teach the claimed invention as discussed above including the use of water or a water-miscible liquid in a weight ratio of 60 to 90 % (lines 4-5 column 4 *Evans*), 100 parts dry mix to 125 to 175 parts water, (lines 26-27 column 5 *Lenchin*) 300 parts dry mix to 400 parts water. (lines 3-5 column 3 *Fruin*)

17. **Regarding Claims 11, and 13** *Lenchin, Evans* and *Fruin* teach the claimed invention as discussed above including the use of starch alkenyl succinate at 0-13 % of the dry mix, (lines 50 colum1, lines 31-31 column 5, lines 15-18 column 6 *Evans*)) the use of bleached or oxidized starch in a batter mix at

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roughly 50 % of dry mix, (lines 31-32 column 1, lines 39-40 column 1, lines 47-50 column 2, lines 3-5 column 3 *Fruin*) the use of water or a water-miscible liquid in a weight ratio of 60 to 90 % (lines 4-5 column 4 *Evans*), 100 parts dry mix to 125 to 175 parts water, (lines 26-27 column 5 *Lenchin*) 300 parts dry mix to 400 parts water, (lines 3-5 column 3 *Fruin*) a other starches and additives. (lines 25-43 column 5, lines 10-24 column 6 *Evans*)

18. Although the ranges in the instant claim and the prior art are not identical the values are substantially close to that of the instant claims so that one of ordinary skill in the art would have expected compositions in such close proportions to those in the prior art to be *prima facie* obvious and to have the same properties. (Titanium Metals Corp., 227 USPQ 773 (CA FC 1985)

19. **Regarding Claim 14, 15, 16, 19, and 20,** *Lenchin*, *Evans* and *Fruin* teach the claimed invention as discussed above including a food product (fowl, fish and chicken) coated with said batter. (lines 1-4 column 5 *Evans*, lines 62-67 column 2 *Fruin*, lines 12-24 column 6 *Lenchin*)

20. **Regarding Claim 17 and 18,** *Lenchin*, *Evans* and *Fruin* teach the claimed invention as discussed above including the food product is pre-cooked prior to being coated, (lines 12-24 column 6 *Lenchin*) and the coated produced is fried or par-fried and frozen. (lines 62-67 column 2 *Fruin*)

21. **Claim 3** is rejected under 35 U.S.C. 103(a) as being unpatentable over *Lenchin*, J.M., U.S. Pat.# 4,529,607, in view of *Evans*, et al., U.S. Pat.# 4,208,442 and in view of *Fruin*, J.C., U.S. Pat.# 3,767,826, and further in view of *Shah*, H., et al., U.S. PGPub. # 20040033302.

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- 22.** **Regarding Claim 3,** *Lenchin, Evans, and Fruin* teach the claimed invention as discussed above, but lack the use of sodium starch N-octenyl succinate.
- 23.** *Shah* teaches the use of sodium starch n-octenyl succinate. (para.26)
- 24.** *Lenchin, Evans, Fruin* and *Shah* are all analogous art, being concerned with making comestibles for human consumption
- 25.** It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of *Shah* to modify the previous methods of *Evans, Fruin* and *Lenchin* to improve the overall flavor of the edible products. (para. 4 *Shah*)
- 26.** **Claim 6** is rejected under 35 U.S.C. 103(a) as being unpatentable over *Lenchin*, J.M., U.S. Pat.# 4,529,607, in view of *Evans*, et al., U.S. Pat.# 4,208,442, and in view of *Fruin*, J.C., U.S. Pat.# 3,767, and further in view of *Sarneel*, F.J., U.S. PGPub. 20020037351
- 27.** **Regarding Claim 6,** *Lenchin, Evans, and Fruin* teach the claimed invention as discussed above, but lack the use of a stabilized formulation of a starch N-octenyl succinate.
- 28.** *Sarneel* teaches the use of a stabilized starch n-octenyl succinate. (para. 12. para. 35)
- 29.** *Lenchin, Evans, Fruin* and *Sarneel* are all analogous art, being concerned with making comestibles for human consumption
- 30.** It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of *Sarneel* to modify the previous

methods of *Evans*, *Fruin* and *Lenchin* to prepare high quality bakery products having good dough viscosity (para. 8 *Sarneel*), to have dough and bakery product properties which are superior to the properties of bakery products prepared with untreated flour. (pg 4ara. *Sarneel*).

31.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JERRY W. ANDERSON whose telephone number is (571)270-3734. The examiner can normally be reached on 7 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joe Del Sole can be reached on (571) 272-1130. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jwa

/Joseph S. Del Sole/
Supervisory Patent Examiner, Art Unit 4152